

JAN 17 2008

By JAMES N. HATTEN, Clerk
Asenall Deputy ClerkIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LEVERN JOYNER,	:	
Petitioner,	:	PRISONER HABEAS CORPUS
	:	28 U.S.C. § 2254
v.	:	
	:	CIVIL ACTION NO.
	:	1:07-CV-2908-TWT
THURBERT BAKER, Georgia	::	
Attorney General; HUGH SMITH,	:	
Hays State Prison, Warden,	:	
Respondents.	:	

ORDER AND OPINION

Petitioner, Levern Joyner, an inmate at the Hays State Prison in Trion, Georgia, has filed the instant habeas corpus petition pursuant to 28 U.S.C. § 2254 seeking to challenge the constitutionality of his January 9, 2004, convictions in the Gwinnett County Superior Court for giving a false name, obstruction of a law enforcement officer, and armed robbery. Petitioner filed a previous habeas corpus petition pursuant to 28 U.S.C. § 2254 in this Court raising identical claims. See Joyner v. Baker, Civil Action No. 1:07-CV-2737-TWT. In the previous action, the Magistrate Judge entered a Report and Recommendation which recommends dismissing the action without prejudice as unexhausted, because Petitioner is currently pursuing his state court remedies through a pending state habeas corpus

petition. Id. The Court has not yet adopted the Report and Recommendation or made a final ruling in the case.

The instant petition is, therefore, duplicative of another action currently pending in this Court. See Durbin v. Jefferson Nat'l Bank, 793 F.2d 1541, 1551 (11th Cir. 1986) ("[A] suit is duplicative of another suit if the parties, issues and available relief do not significantly differ between the two actions."). In order to avoid duplicative litigation, a trial court may, in the exercise of its discretion, either stay or dismiss the duplicative action. Id. at 1551-52. The Court can find no legitimate reason for staying this action in light of Petitioner's efforts to litigate his claims in another pending case.

Accordingly, **IT IS ORDERED** that the instant action be **DISMISSED** as duplicative.

IT IS SO ORDERED this 17 day of January, 2008.



THOMAS W. THRASH, JR.
UNITED STATES DISTRICT JUDGE